



# THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

## JUDGMENT

Case No: 631/2013

In the matter between:

**THE STATE**

**Appellant**

**and**

**MUVHULAWA ERICK MUDAU**

**First Respondent**

**NENGWENANI KHATHUTSHELO NDOU**

**Second Respondent**

**TSHITEREKE SHANDUKANI MAMPHODO**

**Third Respondent**

**Neutral citation:** *The State v Mudau* (631/2013) [2014] ZASCA 190  
(27 November 2014)

**Coram:** MAYA, WALLIS JJA and DAMBUZA AJA

**Heard:** 27 November 2014

**Delivered:** 27 November 2014

**Summary:** Section 53A of the Criminal Law Amendment Act 105 of 1997 – decision that the regional court had no jurisdiction to impose sentences of life imprisonment wrong – Supreme Court of Appeal has no inherent jurisdiction to hear appeals directly from the Regional Court – appeal referred back to the high court to deal with the merits of the appeal against convictions and sentences.

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## ORDER

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**On appeal from:** Limpopo High Court (Thohoyandou) (Makhafola J and Ebersohn AJ sitting as court of appeal)

- 1 The appeal against the order granted by the court below is upheld.
- 2 The matter is referred back to the court below to consider the appeal against the convictions and sentences.

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## JUDGMENT

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MAYA JA (WALLIS and DAMBUZA concurring):

[1] The respondents were convicted by the Sibasa Regional Court, Limpopo (Mr Coetzee) for rape, indecent assault and two counts of robbery with aggravating circumstances. Pursuant to these convictions, they were each sentenced respectively to undergo life imprisonment, twelve months imprisonment, and two terms of 15 years' imprisonment. On appeal to the Limpopo High Court, Thohoyandou (Makhafola J and Booï AJ) against the convictions and sentences, it was held that the sentences were incompetent. They were accordingly set aside and the matter was referred back to the regional court to be dealt with in terms of s 52 of the Criminal Law Amendment Act 105 of 1997 (the Act). The State challenged this decision and the court below (Makhafola J and Ebersohn AJ) consequently granted leave to appeal to this court against both its order and the convictions and sentences imposed by the regional

court.

[2] The order of the court below was based on its finding that when the regional court sentenced the respondents on 14 January 2009, it had no jurisdiction to impose life imprisonment and ought to have referred the matter to the high court for sentencing in terms of s 52 of the Act. The latter section, which has since been repealed, provided for the committal of an accused by the high court after a plea of guilty or trial in the regional court. The relevant part read:

‘52(1) If a regional court, after it has convicted an accused of an offence referred to in Schedule 2 following on—

- (a) A plea of guilty; or
- (b) A plea of not guilty,

but before sentence, is of the opinion that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a regional court in terms of s 51, the court shall stop the proceedings and commit the accused for sentence by a High Court having jurisdiction.’

[3] However, on 31 December 2007, the Criminal Law (Sentencing) Amendment Act 38 of 2007 inserted s 53A into the Act. It reads:

‘If a regional court has, prior to the date of the commencement of [this] Act—

(a) committed an accused for sentence by a High Court under [the Criminal Law Amendment Act, 32 of 2007], the High Court must dispose of the matter as if [this] Act had not been passed; or

(b) not committed an accused for sentence by a High Court under this Act, then the regional court must dispose of the matter in terms of this Act, as amended by the Criminal Law (Sentencing) Amendment Act, 2007.’

[4] Thus, with effect from the date of commencement (31 December 2007) of these provisions jurisdiction was conferred on a regional court to impose life imprisonment for offences referred to in Part 1 of Schedule 2 of the Act which include rape of the nature for which the appellants were convicted. It was therefore within the regional magistrate's powers to sentence the respondents as he did as the appellants correctly conceded. The court below erred in finding that the magistrate's invocation of s 53A of the Act was improper and it should not have set the sentences aside. It was therefore correct to grant leave to appeal in that regard.

[5] But the order of the court below went too far. It should not have granted the appellants leave to appeal to this court in respect of the convictions and sentences. This court's appellate jurisdiction to hear criminal appeals is not an inherent jurisdiction<sup>1</sup>. It has no jurisdiction to hear appeals against convictions and sentences of lower courts.<sup>2</sup> And the high court is not authorised to grant leave to appeal directly to this court against convictions and sentences imposed by the regional court. Such convictions and sentences can only be appealed against in this court when an appeal against them has failed in the high court.<sup>3</sup> As Leach AJA pointed out in *S v Matshona*:<sup>4</sup>

'Not only does this court lack the authority to determine the merits of the appellant's appeal against his sentence at this stage, but there are sound reasons of policy why this court should refuse to do so even if it could. It would be anomalous and fly in the face of the hierarchy of appeals for this Court to hear an appeal directly from a Magistrates' Court without that appeal being adjudicated in the High Court, thereby

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<sup>1</sup> *Sefatsa & others v Attorney-General, Transvaal & another* 1989 (1) SA 821 (A) at 833E-G; *S v Mamkeli* 1992 (2) SACR 5 (A); *S v Fourie* 2001 (2) SACR 118 (SCA) para 13.

<sup>2</sup> *S v Khoasasa* 2003 (1) SACR 123 (SCA) at 133d-g.

<sup>3</sup> *S v Kriel* 2012 (1) SACR 1 (SCA) para 10;

<sup>4</sup> *Matshona v S* [2008] 4 All SA 68 (SCA) para 6.

serving, in effect, as the court of both first and last appeal. In addition, all persons are equal under the law and deserve to be treated the same way. This would not be the case if some offenders first had to have their appeals determined in the High Court before they could seek leave to approach this Court if still dissatisfied while others enjoyed the benefit of their appeals being determined firstly in this Court. And most importantly, this court should be reserved for complex matters truly deserving its attention, and its rolls should not be clogged with cases which could and should be easily be finalised in the High Court.’

The court below must therefore deal with the appeal originally placed before it by the respondents.

[6] Accordingly, the following order is made:

- 1 The appeal against the order granted by the court below is upheld.
- 2 The matter is referred back to the court below to consider the appeal against the convictions and sentences.’

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MML Maya  
Judge of Appeal

## APPEARANCES

For Appellant:

A Madzutha  
Instructed by: Office of the DPP,  
Thohoyandou  
Office of the DPP, Bloemfontein

For Respondent:

AL Thomu  
Instructed by: Thohoyandou Justice  
Centre  
Bloemfontein Justice Centre